REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 46] NEW DELHI, TUESDAY, FEBRUARY 24, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 24th February 1953

S.R.O. 387.—WHEREAS the election of Shri Kanhu Mallik of Brahmanakhandi, P.O. Balanga, District Puri, and Shri Satyapriya Mohanty of Balakati, P.O. Balakati, District Puri, as members of the Legislative Assembly of Orissa from the Bhubaneswar constituency of that Assembly, has been called in question by an election petition, duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bhikari Charan Khatai of Nuapatna, P.O. Balakati, District Puri;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said election petition has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, CUTTACK

PRESENT:

Sri N. C. Ganguli—*Chairman.*

Sri R. C. Mitra, } *Members.*
Sri L. D. Chatterji, }

The 13th February, 1953

ELECTION CASE No. 1 OF 1952

ELECTION PETITION No. 54 OF 1952

Sri Bhikari Charan Khatai of Nuapatna, P.O. Balakati, P.S. Ballanta, P.O. Khuntadiha, Tahsil Banpur, District Puri—*Petitioner.*

Versus

1. Sri Satyapriya Mohanty of Balakati, P.O. Balakati, District Puri.
2. Sri Gangadhar Das Choudhury of Ehingarpur, P.O. Bhatapatna, District Puri.
3. Sri Ananta Ch. Patnayak of Dagarpada, P.O. Chandinchouk, District Cuttack.

4 Sri Sridhar Garabadu of Bhubaneswar, P.O. Bhubaneswar District Puri.
5. Kanhu Mallik of Brahmanakhandi, P.O. Balanga, District Puri.
6. Sri Biswanath Behera of Gadacharipada, P.O. Banamalipur, District Puri.
7. Sri Sridhar Pradhan of Haridamada, P.O. Mendhasal, District Puri.
8 Sri Markanda Malik of Chhanaghar, P.O. Jatani, District Puri.
9. Sri Pitambara Patnaik of Khurda, P O Khurda, District Puri--*Respondents.*

PLEADER FOR THE PETITIONER:

Sri Asoka Das—*Advocate.*

PLEADER FOR THE RESPONDENT NO 1:

Sri L. K. Dasgupta, Sri B. K. Pal & Sri G. N. Sengupta—*Advocates.*

JUDGMENT

The petitioner claims the relief under Section 84 of the Representation of People Act that the election of the members from the Bhubaneswar constituency to the Orissa Legislative Assembly be declared void.

The petitioner's nomination paper was rejected by the Returning Officer on the ground that he was below 25 years on the date of filling of the nomination paper. It is asserted by the petitioner that he was above 25 years on that date.

The case for the Respondents 1 and 5 is that the petitioner was below 25 years on the said qualifying date and the rejection of the nomination paper was properly made.

The following issues were settled:—

Issues

1. Is the petitioner's application maintainable?
2. Did the petitioner's nomination paper comply with the requirements under section 33 of R.P. Act 1951?
3. Is the petition barred by limitation?
4. Did the petitioner complete 25 years of age when he filed the nomination paper?
5. Did the Scrutiny Officer improperly reject the petitioners nomination paper?
6. Should the election of Respondent No. 5 be set aside, if it is found that the nomination paper of the petitioner was illegally rejected?
7. To what relief, if any, is the petitioner entitled?

Issue No. 4.—The petitioner mainly relies on the Hatchitta (Ex. 3) kept in ordinary course of business by the Chaukidar (P.W. 2) and his learned Advocate refers to the entry (Ex. 3/a), from which it appears that a son was born to Sapani on 10th April 1926 This Hatchitta was produced before the Thana Officer on 13th April 1926 and the particular entry was examined by him and he initialled the entry on that date. We have very carefully examined the Hatchitta entry which is said to have been written out by the President at the instance of the Chaukidar and was initialled by the Thana Officer on 13th April 1926. There is a mention against the entry (Ex. 3/a) that the fact has been noted in serial No. 94. Evidently it means that the entry was noted in the Thana Register serial No. 94. There is nothing to indicate that the Chaukidar (P.W 2) who can hardly read and write would manipulate these entries for helping the petitioner in this case. There is evidence to show that this entry relate to the petitioner in this case. On the other hand we have been referred to the School register entry (Ex. 7) from which it appears that the petitioner was born on 5th April 1927 and this entry bears the signatures of the father (P.W. 4) and a witness named Artatran Misra who is dead. This entry (Ex. 7) appears to be in the handwriting of Agadhu Das (R.W. 3) who was then the second teacher of the M. E. School at Bhubaneswar He deposes that he made the entry under the dictation of the Head Master (R.W. 2). We have no reason to suppose that the entry was fabricated. In that entry it has been noted that the date of birth has been given on reference to a horoscope which was produced by the father of the petitioner at the time. This statement may not be untrue. But an explanation has been offered on behalf of the petitioner that the age of the boy was under-stated with a purpose that he might get the

advantage of this in his future life. There was another brother of the petitioner named Sudam who was also admitted in the class in which the petitioner was admitted on the same day. He was 2 years younger to the petitioner and hence it is said that Artatran who was a tutor to the boys suggested that the age of the petitioner should be under-stated. The learned Advocate for the petitioner has suggested in his arguments and referred to certain case laws where this sort of statement in the School Register appeared that such under-statement is rife in India. The father of the petitioner now attempts to throw the entire responsibility on the deceased Artatran to avoid the cross-examination as to his character. We are of opinion that although the father depicts himself to be wholly irresponsible in this business he really took an active part in reducing the age of the boy with some motive which he now conceals. Evidently although we find that the entry (E. 7) is not a fabricated entry, the mention of age therein cannot be accepted.

In the Electoral Roll (Ex. 9) the age of the petitioner was stated to be 23 years on 1st January 1949. This entry has a great bearing in this case. We think that this entry was correctly made and being a public document it cannot be brushed aside for no sufficient reason Nothing has been suggested why this entry which was properly made should not be accepted as correct. This entry was never corrected in the subsequent lists that were published noting the changes, *viz.*, additions, subtraction and correction in the previous list.

The oral evidence for either side in this case about the age of the petitioner is not of much assistance and hence we refrain from discussing the the same at length.

Considering all facts and circumstances we answer the issue in the affirmative.

Issue No. 5.—As found above we answer the issue in the affirmative.

Issue Nos. 1, 2 *and* 3.—These issues are not pressed. They are found in favour of the petitioner.

Issue No. 6.—We think that in case all the voters who gave their ballot papers in the box of Respondent No. 5 intended to give their votes in favour of the petitioner, the possibility is and cannot be ruled out that the Respondent No. 5 may not have succeeded. In this view of the matter we are inclined to set aside the election of the Respondent No. 5 also.

Issue No. 7.—In view of our above findings the election from Bhubaneswar constituency to the Orissa Legislative Assembly is declared to be wholly void.

As the rejection of the nomination paper was due to the improper conduct of the petitioner's father at the time of the petitioner's admission in the Bhubaneswar M. E. School we make no order as to costs.

(Sd.) R. C. MITRA, *Member,*
(Sd.) K. D. CHATTERJI *Member,*
(Sd.) N. C. GANGULI, *Chairman.*

[No. 19/54/52-Elec.III.]

The 12th February, 1953

S.R.O. 388.—WHEREAS the election of Shri Bijay Chandra Das of Military Line, Berhampur (Orissa), as a member of the House of the People from the Ganjam South constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Krishna Chandra Gajapati Narayana Deo, Maharaja of Parlakimedi;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, CUTTACK

PRESENT:

Sri N. C. Ganguli.—*Chairman.*

Sri R. C. Mitra, } *Members.*
Sri K. D. Chatterji, }

The 11th February, 1953

ELECTION CASE NO. 6 OF 1952

ELECTION PETITION NO. 118 OF 1952

Sri Sri Sri Krishna Chandra Gajapati Narayana Deo, Maharaja of Parlakimedi, residing at Parlakimedi in Orissa State—*Petitioner.*

Versus

1. Sri Bijay Chandra Das residing in Military Line, Berhampore (Orissa),
2. Sri Dattaram V. Narasingrow, Advocate residing at Berhampore (Orissa),
3. Sri Satyanand Padhi, Advocate residing at Berhampur (Orissa),
4. Sri Digambar Rath, Advocate, residing at Berhampur (Orissa)—*Respondents.*

PLEADER FOR THE PETITION:

Sri Vedanta Charjee & Sri S. K. Ray, Advocate.

PLEADER FOR THE RESPONDENT No. 1:

Sri Sadhan Gupta & Sri Raghumani Patnaik, Bar-at-Law with Sri Arun Prakash Chatterji, Sri Amitav Mahapatra, Sri V. Pasayet, Advocates & Sri S. K. Das, Pleader.

JUDGMENT

This is a petition filed by the Maharaja of Parlakimedi for setting aside the election of Respondent No. 1 to the House of the People from the Ganjam South Parliamentary Constituency and for declaring the election to be wholly void. The ground upon which the election is sought to be set aside is that the nomination paper of the petitioner was improperly rejected and that the result of the election was materially affected by such improper rejection.

The Returning Officer rejected the nomination of the petitioner under Section 36(2) (b) of the Representation of the People Act 1951 (hereinafter referred to as "the Act") on the ground that he was disqualified under Section 7(d) of the Act. He held, firstly, that the petitioner has an interest in a contract for the supply of goods to the Central Government and secondly that such contract involved the performance of a service undertaken by the Central Government.

By a registered lease dated 31st December, 1942 executed by the petitioner as lessee and the Governor General in Council as lessor, the latter demised into the lessee for a period of 25 years certain piece of land together with all salt pans and brine pans compendiously described as the Punid salt factory in the district of Vizagapattam. The question for determination is whether certain covenants in the lease involve contracts which come within the mischief of Secton 7 (d) of the Act.

Since the applicability of Section 7 of the Act will depend entirely upon the construction of the lease it is necesary to set out the main provisions of the lease. Although it is an ordinary lease of immoveable property taken for the purpose of manufacturing salt it is important to note that it contains provisions for control by the lessor of the manufacture and disposal of salt. Clause 2 provides that the land shall be utilised exclusively for the manufacture and storage of salt. Clause 3 provides for inspection of the salt works by the Collector of salt Revenue. Under clause 8 the employment of persons by the lessee is to be subject to the approval of the lessor. Under clause 9 the lessee is to be granted a License for the manufacture of salt. Under clause 16 the quality of salt to be produced and stored is subject to the approval of the Collector. Then follow clauses 17 and 18 on the interpretation of which the entire controversy between the parties rest. Clause 17 (a) reads as follows:—

> "The lessors shall be entitled to a lien every year on 50 per cent. of the salt produced by the lessee in the Factory and the lessee shall in any season in which notice is given before the 15th January store at his own expense and keep in reserve the first and every succeeding alternate heap of 1200 or 2400 Maunds (as the case may be) of the salt manufactured in the leased land in that season. Such salt shall be termed as "Government Reserve". The Government will have the option to purchase it at such rate as may be decided by the Collector

from time to time for the factory provided that each heap of the Government Reserve stock of one season shall be released for disposal by the lessee as it is replaced by a heap of equal quantity of the new salt of the succeeding season".

Clause 18 reads as follows:—

"The lessee shall pay in cash in a lump-sum on the first day of June in each year so much of the charge incurred by the Collector in paying the Government establishments of the factory as may be in excess of such percentage of duty as the Central Board of Revenue may fix under Section 43 of the Madras Salt Act 1889 or any statutory modification thereof on salt manufactured in the leased premises and removed therefrom in the previous official year".

According to the Returning Officer and the Respondent No. 1 Clause 17 (a) constitutes a contract for the supply of goods to the "appropriate Government" and Clause 18 involves a contract for the performance of a service undertaken by the Government, namely the control of the manufacture and distribution of salt and the provision of an establishment for the purpose.

The issues as framed after hearing the parties are as follows:—

Issues

1. Whether the storage of reserve stock of salt and supply thereof to the Government if required amounts to a contract for supply of goods within the meaning of Section 7 (d) of the R.P. Act, 1951? If so, whether it was subsisting on the relevant date?
2. Whether the petitioner is interested in any contract for performance of any services undertaken by the appropriate Government?
3. Whether in the circumstances of the case the result of the election in the Constituency in question has been materially affected by the rejection of the nomination of the petitioner?
4. Whether the lease granted to the petitioner is merely a transfer of immoveable property?

Issue Nos. 1 *and* 4.—

The contention of Mr. Vedanta Charjee who appears for the petitioner, are:—

(1) That Clause 17 (a) is not an independent contract but merely an incident of the lease, which is a transfer of an interest in immoveable property.

(2) That salt supplied to the Government under clause 17 (a) is a "thing of value to be rendered, periodically or on specified occasions to the transferor by the transferee" and constitutes rent under Section 105 of the Transfer of Property Act.

(3) That the provision for keeping apart as "Government Reserve" 50 per cent. of the production and the exercise of the option of the Government to appropriate the "Government Reserve" does not involve "supply of goods" to the Government.

(4) That the provision contained in clause 17 is in reality a burden imposed upon the lessee in consideration of the demise and is not such a contract which is primarily entered into "for the supply of goods" to the Government.

(5) That even if it is a contract it is not a completed contract and amounts simply to a standing offer and that the contract, if any, arises only when the Government converts the proposal into a contract by acceptance by exercising its option to purchase the salt (after giving notice before the 15th of January of any year).

Mr. Gupta for Respondent No. 1 challenges all these propositions. He argues, firstly, that covenants which are incidents of a lease are nevertheless contracts; Secondly that the supply of salt to the Government is not rent; thirdly that the sale of 50 per cent. of the salt produced involve supply of goods to the Government notwithstanding the fact that such stock is earmarked for the Government; fourthly, that it is immaterial whether the contract to supply salt is to the benefit of the lessor and detriment of the lessee and whether it is the primary or an incidental object of the transaction; and lastly, that Clause 17 is a completed contract and that it is not a standing offer but a contingent contract under Section 31 of the Indian Contract Act.

The first contention of Mr. Vedanta Charjee that it is not permissible to spell out an independent contract, as it were, from one of the restrictive convenants of the lease is in our opinion not tenable. It is true that a lease is a transfer of an interest in immoveable property. That interest is the right to possess and enjoy immoveable property. But this right has necessarily to be regulated by covenants binding the lessor and the lessee which are nothing but contractual obligations. In fact in Chapter V of the Tranfer of Property Act there is copious reference to

contracts Section 108 elaborately lays down the terms of implied contracts between the lessor and the lessee in the absence of a contract to the contrary It is clear, therefore, that a lease may contain contracts The only question is whether the contract contained in Clause 17 is one offending against Section 7(d) of the Act

We have no hesitation in rejecting the second contention of Mr Vedanta Charjee that the supply of salt is a payment of rent under the lease A reference to clauses 6 20 and 21 makes it clear that the lessee has to make periodic payments which constitute the rent payable under the lease Moreover the supply of salt is in consideration for the price payable by the Government and constitutes a Sale The adequacy or inadequacy of the consideration is immaterial A thing paid for by the lessor cannot be rent

In advancing the third contention Mr Vedanta Charjee went very far He argued that on a proper interpretation of Clause 17 there is a supply of goods by the petitioner as the lessee to the Government and that Government has a lien over 50 per cent of the salt and argued from this clause that half of the salt produced is the property of the Government and not of the petitioner and consequently there was no supply by the petitioner to the Government There was a good deal of argument on both sides on the basis of this so called lien but it is difficult to understand the meaning of the word 'lien' in the context of that clause A lien is the right of retention exercised by a person over the goods belonging to another person It presupposes possession of the goods by the holder of the lien It postulates ownership in another person Clause 17 however is hardly referable to a right of retention because the Government never is in possession of the salt when manufactured It is to be noted that 50 per cent of the salt produced is not automatically converted into 'Government Reserve' The Government reserve' is created only when the lessee is required by notice before the 15th January in any year to 'Store at his own expense and keep in reserve the first and every succeeding alternate heap " Yet the clause provides for a lien every year', although (as is admitted by the parties) the lessee is free to dispose of the entire salt in the absence of such notice The word lien" appears to have been inappropriately used and signifies nothing more than a contractual right of the Government to enforce the sale of 50 per cent of salt produced by the lessee We cannot accept Mr Vedanta Charjee's contention that as soon as the salt is produced half of it becomes Government property Nor is there reason to suppose that even the "Government Reserve' (created by proper notice) is the property of the Government Suppose the "Government Reserve" is accidentally destroyed On whom will the loss fall? Is the Government bound to pay for it even though it has not exercised its option to buy it? In our view the clause merely involves a contractual obligation undertaken by the lessee restricting his power of disposal and the property in the stock remains in the petitioners Consequently when a sale takes place it undoubtedly involves supply of goods by the petitioner to the Government

The next contention of Mr Vedanta Charjee is that the contract for supply of goods contemplated by Section 7(d) of the Act is a contract primarily entered into for that purpose He contends in other words that if there is a contract involving supply of goods incidental to a transaction essentially of a different nature and in this case, a lease, it is not a contract *for* the supply of goods According to him the first part of Section 7(d) really refers to the ordinary kind of contracts between a contractor and the Government the sole object of which is sale and purchase of goods He points out that the object of the legislature in disqualifying Government Contractors is to exclude from the Legislatures persons who have made a contract with the Government whereby they expect to make a profit and who therefore, are likely to be subservient to the Executive Government But a person on whom the Government imposes by a contract a burden or an obligation to supply goods to Government at prices to be dictated by Government are not affected by such considerations

We have anxiously given consideration to this aspect of the matter It may be that the legislature had only intended to disqualify persons who are ordinarily known as Government contractors and that it is somewhat unreasonable to suppose the object to be to disqualify a person on whom the Government imposes an obligation in consideration of a privilege conferred to supply goods without even guaranteeing the normal market profits But on the other hand if the object is to exclude such persons from the scope of the disqualification the language of the Section has certainly failed to fulfil that object Where the language of a statute is not ambiguous it is not permissible to construe it with reference to the objects that the legislature may possibly have had in mind The language of section 7(d) constrains us to hold that where there is supply of goods under a contract whether it is the result of a bargain or compulsion or not and whether it is the sole object of the transaction or not the person who supplies the goods under the contract to the Government is disqualified under the Section In the case of Shankar Nanasaheb Karpe Vs Maruti Sitaram Sanwant and others published

in the Gazette of India (Extraordinary) Part I Section 1 page 2295 it was held by the Election Tribunal of Bombay that a person who purchased certain forest coupes from the Government and undertook to resell firewood and charcoal when demanded by the Government was a person interested in a contract for the supply of goods to the Government and disqualified under section 7(d). The argument that the contract was primarily one for the purchase of the forest products and the obligation to resell was merely a condition that did not constitute a contract *for* the supply of goods, was negatived. We see no reason to differ from the reasonings of that decision and we are of opinion that if there was a contract between the petitioner and the Government it was a contract for the supply of goods within the meaning of section 7(d) of the Act.

The last, and in our opinion the most substantial contention, raised by Mr. Vedanta Charjee is that the so called contract contained in clause 17(a) is not a completed contract but a standing offer. In this connection reference was made to the evidence of the only witness examined in this case—the witness for the petitioner—that no notice was given before 15th of January, 1951 by the Government. No rebutting evidence has been adduced and if Mr. Vedanta Charjee's contention is correct then there had been no acceptance on the part of the Government of the standing offer and consequently there was no completed contract on the date when the nomination paper was filed.

The clause in question has given rise to considerable difficulty of construction with reference to the law of formation of contracts as laid down in the Indian Contract Act. That an offer must be accepted before a contract can arise can admit of no doubt. Where there is an agreement between two parties whereby one of them undertakes to supply to the other goods of specified quality on terms and conditions agreed upon as and when the other party orders for the goods, the agreement involves a series of potential contracts, each contract arising upon the accepteance by placing an order. Such an agreement is not by itself a contract although the terms are proposed and accepted. It is a standing offer capable of being converted into a contract on each acceptance by the other party. It presupposes that the other party is not bound to accept the standing offer and that the offeror is free to withdraw his offer before acceptance. In Reg. Vs. Demers decided by the Privy Council (1900) A.C. page 103 there was an agreement between the plaintiff and the Canadian Government whereby the plaintiff undertook to do the printing and binding works of the Canadian Government on terms and conditions agreed upon, if the Government chose to place orders with the plaintiff. The Government, having failed to place any orders with the plaintiff the plaintiff sued the Government for damages for breach of the contract. Their Lordships held that the contract was for executing printing and binding works only if the Government placed the orders, that the Government was not bound to take work from the plaintiff and that a contract would only arise creating the obligation of the Government to pay for work done if the Government accepted the offer by placing orders. The same principle was laid down in Secretary of State Vs. Madho Ram, A.I.R. 1929 Lahore 114 and the decisions relied upon in that case

The clause we are considering is very much similar. Under it the petitioner undertakes to supply 50 per cent. of the salt produced if the Government exercised its option to buy it; but there is no obligation on the Government to exercise that option. The clause appears to contemplate acceptance by Government year after year by giving notice. The Government is not bound to convert the proposal into a promise by acceptance.

On the other hand there is an obvious difficulty in construing the clause as merely a standing offer. If it is an offer (made with a view to acceptance by the Government) it is, under the law of contract, revocable. In all those case, of which Reg. Vs. Demers is the type, neither the offeree was forced to accept, nor the offeror was bound to continue, the offer: the offer was revocable. But it is hardly possible to contend that the petitioner can relieve himself of this convenant contained in the lease by giving notice of revocation. That clause (1) of the lease gives the parties the right to determine the lease is immaterial. It is therefore impossible to escape the conclusion that by the stipulation contained in clause 17(a) the petitioner has entered into a binding promise made in consideration of the demise and that the clause in question is not merely a standing offer.

Mr. Vedanta Charjee also relies upon a decision of the House of Lords In Helby Vs. Mathews (1895) A.C. 471. The point for decision in that case was not whether there was a completed contract but whether it was a contract for hiring or a contract for sale. The decision, therefore is not applicable to the present case

There is another reason why this clause should be regarded as a contract. That the word "contract" in section 7(d) of the Act is to be construed with reference to the niceties involved in the law of formation of contract laid down in the Indian Contract Act is a matter of great doubt. The word is to be reasonably construed with reference to the object of the Act and not necessarily to the technical rules of law laid down in the Indian Contract Act. For, otherwise the very object of the enactment may be defeated. What would happen if a person interested in an agreement with the Government of the kind we are considering is given an order for the supply of goods a few days after his nomination for election is accepted? He would be qualified at the date of nomination because the contract had not arisen before that date. Yet he would be disqualified because of the completion of the contract, "for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State". If such persons are elected by reason of the absence of a completed contract they would incur disqualification each time the agreement ripens into a contract by acceptance of the standing offer by the Government. No one can doubt that such a result will seriously jeopardise the independence of the members of the legislature, the preservation of which is the sole object of the provisions of section 7. A member of the legislature who has entered into such an agreement will be at the mercy of the Government which could, by mere acceptance of the standing offer, make a contract that will unseat him or by refraining from doing so ensure his subservience. Such a result could not have been contemplated by the legislature. We think, therefore, that the word "Contract" is used in a comprehensive and popular sense. It is meant to embrace all cases where a person agrees to supply goods to the Government. We think that in construing clause 7(d) of the Act we are not fettered by the technical rules of law in the Indian Contract Act regarding formation of contracts and that words employed in statutes regulating the qualifications for entry into legislatures are proper subject-matter for beneficial construction that would advance the object of the statute. In this we are supported by the decision in Nutton Vs. Wilson, (1899) 22 Q B.D. 744.

Our conclusion therefore is that the petitioner is interested in a contract for the supply of goods to the appropriate Government. In arriving at this conclusion we are not unmindful of the fact that the contract is unaccompanied by any obligation on the part of the Government and that the petitioner is not a person who is a Government Contractor in the ordinary sense and that the stipulation is in the nature of a burden rather than a benefit. But election is a matter of public concern and not a matter of private rights and we are compelled to arrive at the conclusion by the language of section 7 of the Act and the spirit of the enactment.

Issues 2 and 3.—In view of our decision on issue No. 1 it is unnecessary to decide these issues.

ORDER OF THE TRIBUNAL

In the result it is held that the nomination of the petitioner was validly rejected. The petition is dismissed with costs to Respondent No. 1. The petitioner shall pay Rs. 300 to Respondent No. 1 as costs.

(Sd.) N. C. GANGULI, *Chairman.*
(Sd.) R. C. MITRA, *Member.*
(Sd.) K. D. CHATTERJI, *Member.*

The 11th February 1953.

[No. 19/118/52-Elec. III.]

S.R.O. 389.—WHEREAS the election of Shri Gaya Prassad Mathura Prasad of Diwalanaka ward, Saugor Tehsil, District Saugor and of Shri Ramlal Balchand of Bina, Tehsil Khurai, District Saugor, as members of the Legislative Assembly of Madhya Pradesh from the Khurai constituency of that Assembly, has been called in question by an election petition (Election Petition No. 37 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Jagannath, son of Nandlal, of Post Nariaoli, District Saugor;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said election petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JABALPUR

PRESENT:

(1) Shri N. H. Majumdar, B.Sc., LL.B.—*Chairman.*

(2) Shri G. A. Phadke, B.A., LL.B.—*Member.*

(3) Shri M. M. Mullna, M.A., B.L., Advocate—*Member.*

ELECTION PETITION CASE NO. 4 OF 1952

Jagannath aged about 45 years of Nandlal, Occupation cultivator, resident of Narlaoli, Tehsil and District Saugor (M.P.)—*Petitioner.*

Versus

(1) Achwal Pandurang;
(2) Bansidhar;
(3) Chintaman;
(4) Dashrathlal;
(5) Hiralal;
(6) Jodhasingh;
(7) Kundanlal s/o Manakchand;
(8) Kundanlal s/o Ratanchand;
(9) Lokras Govindrao.
(10) Nathuram;
(11) Onkarsingh;
(12) Ramgulam Choube;
(13) Ramlal s/o Balchand;
(14) Ramlal s/o Devi Chamar,
(15) Sharma Kishanchand;
(16) Thakur Shersingh;
(17) Shrikrishna Selot;
(18) Gayaprasad Kori;
(19) Beharilal;
(20) Mathur Aharwar;
(21) Khemchand;
(22) Pyarelal; and
(25) Parmanand—*Respondents.*

ORDER

(PASSED ON 19TH FEBRUARY, 1953)

The petitioner, who is an elector in the Khurai Constituency of the Legislative Assembly of Madhya Pradesh, presented this Election Petition, calling in question the said election on the ground that nomination papers of some of the candidates were improperly rejected, and of one of the candidates improperly accepted by the Returning Officer, as a result of which, the Election was materially affected.

2. This was a double-member constituency, from which Respondent No. 13—Ramlal s/o Balchand was elected to the general seat, and Respondent No. 18—Gayaprasad—to the other seat reserved for the Schedule castes. Respondents No. 1 to 23 had filed their nomination papers; and the Returning Officer rejected the nominations of Respondent No. 12 Ramgulam Choube, and No. 17 Shrikrishna Selot, on the ground that each of them was holding an office of profit under the Government of Madhya Pradesh, in as much as he has been appointed patel of Silgaon and Narlaoli villages respectively. The Returning Officer had accepted the nomination paper of Respondent No. 4 Dashrathlal, who was holding the office of Patel of village Khurai in the said constituency. The rejection of the nomination papers of Shri Selot and Ramgulam was improper; and it has materially affected the result of the Election. The petitioner, therefore, claimed a declaration that the said Election was wholly void.

3 The Respondent No 13, who was the main contesting respondent, admitted that the nomination papers of Ramgulam and Shri Selot were rejected, and that of Dasrathlal accepted, but according to him the rejection or acceptance was not improper Respondent No 18 Gayaprasad who has been elected to the reserved seat has stated in his defence that his election is not affected by the improper rejection or acceptance of the nomination papers of the three respondents

4 The questions that arose for determination are covered by the following issues that were framed for the trial —

Issues	*Finding*
I (a) Is the office of Patel of a village appointed under Section 50 of the Madhya Pradesh Abolition of Proprietary Rights Act an office of profit?	Yes
(b) Were respondent No 12 Shri Ramgulam Choube and Resoondent No 17 Shri Shri Krishna Singh appointed to and did they hold the office of Patels under Section 50 of the Madhya Pradesh Abolition of Proprietary Rights Act?	No
Is the execution of an agreement by a Patel necessary before he can be deemed to be holding the office of a Patel?	Yes
(c) Had the Respondent No 17 not executed any agreement before the filing of his nomination paper by him and was he therefore, not holding the office of Patel?	Not executed Not holding
II (a) Had Dashrathlal, Respondent No 4 been appointed and had he accepted the office of pate of the village Khera Salaya before filling his nomination paper?	No
(b) Was the acceptance of his nomination improper?	No
III (a) Did Respondent 6 hold the office of a patel and was the acceptance of his nomination paper also therefore, improper?	Does not arise
(b) Can this question be considered by the Tribunal on the plea raised by respondent No 1?	No
IV Was the disqualification if any on account of a person's holding office of patel removed by the provisions of M P Offices of Profit (Removal of Disqualifications) Act (Act No VII of 1950)?	Yes
V (a) Has the rejection of the Nomination papers of the Respondents Nos 12 and 17 and the acceptance of the Nomination of Respondents Nos 4 and 6 (if the question relating to No 6 can be raised in these proceedings) materially affected the election to the two seats for Khurai Constituency in the Madhya Pradesh Legislative Assembly?	Yes
(b) Do the irregularities mentioned in Issue No V(a) affect the election of Shri Gaya Prashad, Respondent No 18 in any way?	Yes

5 The questions covered by the issues when grouped and narrowed down, are as under —

1 (a) Whether rejection of the nomination papers of Shri Selot and Ramgulam was improper?

(b) Whether acceptance of the nomination paper of Dasrathlal was improper?

(c) Has the rejection or acceptance materially affected the result of the Election?

2 Assuming the Election to the General Seat was materially affected by either improper rejection or acceptance of nomination papers does it also affect the election to the Reserved Seat?

6 According to the petitioner Shri Selot was appointed patel of village Nariaoli Shri Selot and one Madholal were the two candidates who had applied to be appointed as Patel of that village and out of the two Shri Selot was selected by the Revenue Autnorities and the Deputy Commissioner by his order dated 21st June 1951 (Ex 13-R-1) made an order appointing Shri Selot the patel of Nariaoli

7. In exercise of the powers conferred by Act No. I of 1951, the State Government made rules for the appointment of patels. Under Rule 11 of the said Rules, a person selected to be appointed as a patel, had either to execute a security bond in form 'A' appended to the Rules or had to secure exemption therefrom from the Deputy Commissioner, before his appointment as a Patel; and under Rule 12, the Patel so appointed, was required to execute an agreement in form 'B'. In the case of Shri Selot, he had neither executed the security bond in form 'A' nor obtained exemption therefrom before his order of appointment on 21st June 1951. He obtained exemption on 10th August 1951. It was, therefore, contended on his behalf that the order passed by the Revenue Officer on 21st June 1951, purporting to appoint Shri Selot as a Patel, was in fact only an order selecting him to be so appointed. After securing an exemption, Shri Selot was asked to execute the agreement in form 'B'. He declined to do so; and finally the papers in the Revenue Case were ordered to be filed.

8. In the opinion of the learned Counsel, Shri Selot was not appointed a Patel, and if it be held that he was so appointed he had not assumed that office as he did not execute the agreement. According to the learned Counsel for the Respondent No. 13, execution of the agreement in form 'B' was an act subsidiary to the order of appointment; and, therefore, omission to execute the agreement in form 'B' will not affect the status of patel conferred on Shri Selot by the order of appointment made on 21st June 1951.

9. Under Sub-clause (a) of clause (1) of Article 191 of the Constitution, a person is disqualified for membership of the State Legislature, if he holds any office of profit under the State. We have given a finding already in the initial stage of these proceedings that the office of patel appointed under Act No. 1 of 1951, is an office of profit. The reasons therefor are as under—

A patel is appointed under Section 50 Sub-Clause (1) of the Madhya Pradesh Abolition of Proprietary Rights Act (hereinafter called the Act No. I of 1951). Sub-clause (1) of Section 50 of the said Act, provides that the previous proprietor acting as lambardar or Sardar Lambardar, appointed for each village under the C.P. Land Revenue Act of 1917, shall cease to act as such on the vesting of the proprietary rights in the State; and the Deputy Commissioner [illegible] person as patel in each village on such terms and conditions as may [illegible]. The Rules made for that purpose laid down the procedure to be [illegible] terms and conditions of the office were incorporated in the Agreement (in form 'B'), which itself forms part of the rules. A person was selected for the post: and then an order for his appointment was made. On appointment he was to execute an agreement in form 'B'. The Deputy Commissioner was to sign the agreement in token of his acceptance of it. It is mentioned at the end of para. (1) of the agreement that the Patel was to collect land revenue, rent etc; and in return was to receive commission.

This makes it clear that emoluments in the shape of commission were attached to the office of Patel. Whether a particular individual appointed as a patel, accepts or not the remuneration promised to him, has no bearing on the question whether the office he occupies is an office of profit or not. There may arise cases where a particular individual appointed as Patel may forego his claim to receive the remuneration; but that will not affect the incidents attached to his office. The agreement contains a clear convenant to pay a commission to the Patel. We hold, therefore, that the office of Patel appointed under Act No. I of 1951, is an office of profit under the State.

10. The words used in Article 191 of the Constitution are 'holds any office or profit.' The word 'hold' has nowhere been defined in the Constitution. The dictionary meaning of the word 'hold' in relation to an office is 'occupy'. We have, therefore, to ascertain whether after the order of 21st June 1951, Shri Selot had occupied that office. In the initial stage of these proceedings, we had heard arguments of the learned counsel on these legal questions; and as it was then contended that the Respondent No. 13 would be able to lead evidence to show that Shri Selot had occupied the office of Patel inasmuch as he had done certain acts as a Patel, parties were called upon to lead evidence.

11. Shri Selot entered the witness-box, and said that he did not do any act pertaining to the office of Patel. An attempt was made for the Respondent No. 13 to show by the evidence of Umashanker Shukla, a student of the Sagar University, that Shri Selot had acted as Patel. Umashanker said that Selot had prevented his servant from cutting fuel whereupon he (Umashanker) went personally to Selot and Selot told him (Umashanker) that a permit from the Government or from Shri Selot who was the Patel was necessary. But Umashanker further admits that after this conversation, Selot allowed him to cut fuel without a permit. We were convinced that all that Umashanker has said was false; and the learned

Counsel for the Respondent No. 13 also shared our view and, therefore, conceded that he has failed to prove any act by Shri Selot pertaining to the office of Patel. It is thus established that Shri Selot did not do any act in his capacity as Patel.

12. The word 'Patel' has nowhere been defined in Act No. I of 1951. It is no doubt an office. An office is a bundle of rights and obligations. It was, therefore, rightly argued by the learned Counsel for Shri Selot that unless a person was clothed with the rights and subjected to the liabilities attached to a particular office, he cannot be said to be holding that office. Under Rule 11, a person selected to be appointed as Patel could not be so appointed unless he had either executed the security bond in form 'A', or secured exemption therefrom before his appointment. In this case, the Deputy Commissioner could not, therefore, appoint Shri Selot a Patel, unless the security bond was executed or the exemption therefrom was granted to Shri Selot. The Order, dated, 21st June 1951, though purports to read as an Order of appointment, cannot have that effect as the appointing authority could not make that order.

13. On the appointment of the person as a Patel, he was to execute a bond in form 'B'. The terms of the bond bind its executant to perform the duties mentioned in the body of the bond itself. In this case, Shri Selot has not acted as Patel, nor had he executed the bond in form 'B'. Not only that, P.W. 1 Laxmiprasad, the Patwari of the village was already appointed Patel of the village Narlaoli in April 1951; and the Patwari has given evidence before us to the effect that he did the work of collection of rent etc. from April 1951 till April 1952. At the time when the proceedings for appointing a Patel of Narlaoli were started, the Patwari of the village had already been appointed the Patel under rule 13, and he was functioning as such in that office. The order of temporary appointment issued to Patwari (Ex. P-8) was not cancelled at any time after 21st June 1951; and this shows that no other person was appointed patel after the appointment of the patwari We, therefore, hold that Shri Selot was not appointed patel.

14. It is not enough that Shri Selot was "appointed patel." It must be shown further that he was holding the office on the day he filed his nomination paper. The rules made under the Act show that after selection, the appointment of a patel was made under a contract, the terms of which were reduced to writing in the form of an agreement in form 'B'. The contract of appointment will not be deemed to be complete and effective until the agreement is executed, and accepted by the Deputy Commissioner. In this case, Syt. Selot did not execute the agreement nor did he do any act pertaining to the office of patel. We are, therefore, of opinion that Syt. Selot was not holding the office of patel on the date on which he filed his nomination paper.

15. Under Clause (1) of Article 191 of the Constitution, the disqualification was attached to the person holding an office of profit under the State; and the State Legislature was empowered to remove by an Act the disqualification attached to the office, and not to an individual who held that office. Accordingly, Act No. VII of 1950, called the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, was passed by the State Legislature, removing the disqualification attached to the offices mentioned in the Schedule attached thereto. The offices of Lambardar and Mukaddam and of Patel as defined in the Land Revenue Act of 1917, have been included in the list. It is, therefore, clear that the disqualification attached to the offices of Lambardar, Mukaddam, and Patel in the Ryotwari villages, was removed by Act No. VII of 1950.

16. Act No. I of 1951 was passed after Act No. VII of 1950; and, therefore, the patel appointed under Act No. I of 1951 could not be included in the Schedule attached to the Act No. VII of 1950. We have, therefore, to ascertain whether patel under Act No I of 1951 was entirely a new office, created by the Statute, or whether the person described as patel was only a substitute for one or more offices included in the Schedule attached to Act No. VII of 1950.

17. In order to have a thorough and correct estimate of the question posed in the preceding paragraph, it is necessary to examine the theme and the provisions of the Act No. I of 1951. It is agreed that Act No. I of 1951 was enacted solely for the purpose of removing the intermediary between the State and the actual tiller of land. The intermediary was the malguzar. The village held by him was, therefore, described as "Malguzari village" in contrast with the Ryotwari village that was owned by the State. The sole object of the Act was to deprive the Malguzar of his proprietary rights in the village including land—cultivated or fallow—trees, forest, waters and minerals etc.

18. Chapter I of the Act deals with definitions Chapter II contains the main theme of the Act. It deals with the question of vesting of proprietary rights. Section (3) provides that the proprietary rights shall pass from the proprietor, and

vest in the State. Section (4) relates to the consequences on vesting. Clause (a) of Sub-clause (1) of Section (4) provides that all rights vesting in the proprietor in fallow land, trees, jungles waters, minerals etc. shall cease. Clause (e) of the said sub-clause prevents attachment of the interest of the proprietor so acquired. The provisions contained in this chapter show clearly that the proprietary rights were not extinguished They only passed from the malguzar to the State.

19. Chapters III, IV and V deal with the amount of compensation, determination of debts and payment of compensation. Then we come to Chapter VI, which deals with the management and tenures of land. Under Section 38, the proprietor was declared malik-makguza of his home-farm land in his possession. A sub-tenant of sir land became an occupancy tenant of the State Similarly under Section 39, *protected thekedar* or headman was declared occupancy tenant of the land in his possession, and he was declared to be the tenant of the State Under Section 45, occupancy and absolute occupancy tenants were declared to be tenants of the State. Land held by village servants and other servants of the malguzar, was allowed to be held by them on the same terms as before Then we come to Section 50 which deals with the appointment of Patel. We are not concerned with the remaining chapters of the Act which deal with matters not connected with the Malguzari villages

20 We, thus, find that Act No. I of 1951, did nothing more than deprive the malguzar of his proprietary rights in the village, and transfer them to the State. There was no change in the system of land tenure in the village, nor was there any change effected in the management of the village. In short, the malguzars disappeared, leaving everything as before.

21. Section 50 of Act No. I of 1951, is as under:—

> "Notwithstanding anything contained in the Central Provinces Land Revenue Act of 1917, on and from the date of vesting every proprietor acting as Sadar Lambardar or Lambardar, before such date in a Mahal or Patti vesting in the State under Section 3, shall cease to act as such and the Deputy Commissioner shall in accordance with the Rules made in this behalf appoint a person as patel for each village on such terms and conditions as may be prescribed"

Sub clause (3) of the Section enumerates the duties which the patel was called upon to perform They include collection and payment into Government treasury of land revenue and rents and other cesses. Under Sub-Clause (B) of Clause (2) of the Section the patel was also clothed with the powers of a Land-Lord under the Central Provinces Tenancy Act of 1920.

22. The wording of Sub-clause (1) of Section 50 of Act No I of 1951, indicates very clearly that the Legislature did not intend to extinguish the office of the village Lambardar. What Section 50 Sub Clause (1) did was to remove the existing occupant of the office of Lambardar, and appoint a substitute called 'Patel'. The duties assigned to the patel are precisely the same as were assigned to the Lambardar. Under Rule 17 the patel is required to collect Land Revenue, taxes, cesses and other dues; and also to discharge the duties imposed on a Mukaddam and Patel under the C P Land Revenue Act of 1917 The wording of rule 17 leaves no doubt on the point that patel appointed under Act No I of 1951 was to function as Lambardar and in addition he was also to discharge the duties of a village headman It is further clear from the wording of Rule 17 that the offices of the Mukaddam and patel (in a Ryotwari village) were not extinguished by the passing of the Act No. I of 1951 The only change effected by Act No I of 1951 was to deprive the proprietor of his proprietary rights in the village, and consequently removed him from the office of the Lambardar and another person called 'Patel' was appointed to function in that office. We hold therefore, that the offices of Lambardar and Mukaddam did not cease even after the passing of Act No. I of 1951.

23 Under the Land Revenue Act of 1917 the Government had to appoint a person on whom the responsibility to collect and pay the land revenue to the Government could be fastened This became all the more necessary where there were more than one proprietor in a village and for that purpose a person—usually one of the proprietors was appointed Lambardar whose main function was to collect rents and pay land revenue to the Government. As a head-man of the village this agent of the Government was also required to do certain other functions such as looking after the sanitation of the village, and sending reports of crimes etc.; and, therefore the same person was appointed as Mukaddam Similarly, in the Ryotwari villages under the C.P.L. R Act of 1917, the person appointed primarily for collection of rents was called 'Patel', and he was also called upon to perform the duties of Mukaddam On a comparison of the duties assigned to the Lambardar in the Malguzari villages with the duties assigned to the Patel appointed under Act

No. I of 1951, we find that they are identical. Each of them was the representative of the proprietor. He had to collect land revenue and rents and receive remuneration from the proprietor. He was a Land-Lord within the meaning of C.P. Tenancy Act. In addition to his duties pertaining to the main function of collection of rents, he was also asked to perform the duties of Mukaddam. Taking all these facts into consideration, we are of opinion that the office which the present patel is called upon to occupy was not a new office created by the statute; it is the same office that was previously occupied by Lambardar in malguzari villages.

24. It follows, therefore, that the present patel, who is occupying the same office, which was previously occupied by the Lambardar under the old Act, will be entitled to all the privileges that are attached to that office. The disqualification attached to the office of Lambardar was removed by Act No. VII of 1950; and, therefore, the present patel who holds that office will hold it free from that disqualification.

25. After passing of the Act No. VII of 1950, (Removal of Disqualifications Act), Act No. I of 1951 (The Malguzari Abolition Act), was passed; and Patels came to be appointed under the latter Act. A doubt, thereto e arose whether the disqualification under Article 191 of the Constitution attached to the office of profit of the Patel was removed or not by Act No. VII of 1950, and with a view to remove that doubt, Act No. IV of 1952 [M.P. Offices of Profit (Removal of Disqualifications) (Amendment) Act] was passed. In the Act No. VII of 1950, item No. 5 in the Schedule mentioned Lambardar, Lambardar-Gumasta, or Mukaddam as defined in the C. P. Land Revenue Act of 1917. Item No. 5 of the old Act was deleted and the present item No. 5 is as under:—

> "Any person appointed as or performing the functions of a Patel or Mukaddam under any law for the time being in force."

Item No. 8 under Act No. VII of 1950, which mentioned Patel as defined in the C. P. L. R. Act of 1917, was also deleted. As an effect of the Amendment, a Patel or Mukaddam appointed under any law shall have the disqualification removed from his office. These amendments were made to come into force with effect from 23rd of February 1952. With a view to know the intention of the legislature in enacting this amending Act, and to know why the date 23rd February 1952 was mentioned, we had perused the Objects and Reasons of the Bill. It is clearly mentioned in the said Objects and Reasons that a doubt has been created whether the disqualification attached to the office of Patel under Act No. I of 1951 was of not removed by the old Act No. VII of 1950; and, therefore, this Act was enacted.

26. Elections were complete by the 22nd of February 1952 and the Legislature has deliberately refrained from expressing any opinion on the question whether the office of Patel under Act No. I of 1951 was or not exempted under the existing legislation *i.e.*, under Act No. VII of 1950. This was perhaps because Election Petitions were filed and that question was before the Tribunals. It is not, therefore, correct to say that by enacting the amending Act of 1952, the legislature has accepted the position that the previous Act *viz.* Act No. VII of 1950 had not removed the disqualification attached to the office of Patel. Act No. IV of 1952 is not a piece of remedial legislation. The Act only made clear, and declared unequivocally the rights that had already existed before the passing of that Act.

27. The word 'Patel' as used in Section 50 of Act No. I of 1951, has not been defined in the Act; but Section 2 Sub-Clause (B) has been enacted to help us to gather its meaning. Under sub-clause (B) of Section 2 of Act No. I of 1951, any expression not herein defined in the Act, but used or explained in the C.P.L.R. Act of 1917, shall have the same meaning therein assigned to it. This means that the word 'Patel' used in the Act No. I of 1951 has the same meaning as is assigned to it in the C P.L.R. Act of 1917. Under the Land Revenue Act of 1917, the word 'Patel' means the head-man of a Ryotwari village appointed under that Act. The effect of Act No. I of 1951 was the abolition of the malguzari rights or in other words taking away of the proprietary rights that had vested in the Malguzars. After the proprietary rights were taken away from the Malguzars, and they had vested in the Government, the village no longer remained a Malguzari village; it became a Ryotwari village; and the head-man appointed for such village under the C.P L.R. Act of 1917 was called Patel; and, therefore, the person appointed as Patel after the passing of Abolition of Malguzari Act, came to be described by the same term.

28. As has been stated before, the offices of the Lambardar in the Malguzari villages and Patel in the Ryotwari villages, were exactly identical; and as Malguzari villages do not hereafter exist, the head-man appointed for malguzari villages and previously called lambardar was naturally described by the term 'Patel' as used in the C.P. Land Revenue Act of 1917.

29 We hold, therefore, that a Patel appointed under Section 50 of Act No I of 1951, was a substitute for Lambardar in a Malguzari village On the passing of Act No 1 of 1951, the office of Lambardar or other offices created under the Land Revenue Act of 1917 were not extinguished The previous occupant of the office of Lambardar was removed and in his place a new occupant was appointed, and he was called 'Patel As the disqualification attached to the office of the Lambardar had already been removed by Act No VII of 1950, the present patel who occupies that office will also hold it free from the disqualification that was removed therefrom We hold therefore that assuming Syt Selot was not only appointed but had actually held the office of Patel of Varlaoli at the time of the filing of his nomination paper, he was not disqualified from standing as a candidate for the Election as the disqualification attached to the office had already been removed before his nomination paper was filed We consequently hold that the rejection of the nomination paper of Syt Selot was improper

30 Having held the rejection of the nomination paper of Shri Selot to be improper, we have now to find out whether the rejection has materially affected the result of the Election Section 100(1) clause (c) of the Representation of the Peoples Act is as under.—

> 'If the Tribunal is of opinion that the result of the Election has been materially affected by the improper acceptance or rejection of nomination paper, the Tribunal shall declare the Election to be wholly void.'

The plain meaning of this clause is that before an improper acceptance or rejection of any nomination paper can be a ground for setting aside an Election, the Tribunal must form an opinion that in fact the result of the Election has been materially affected, and not merely that it is likely to have been materially affected. In our opinion, in the case of improper rejection of a nomination paper, there is a very strong presumption that the result of the Election has been materially affected, and we go a step further and say that the presumption is incapable of rebuttal, and any attempt to rebut it, would only lead to nothing but speculation This has been the view in almost all cases decided under the old law and also those decided under the Representation of the Peoples Act.

31 We may, however observe that in cases of improper acceptance of a nomination, it is possible in certain cases to show that the result of Election has not been materially affected, but in the case of rejection of a nomination paper, it is almost impossible to lead any evidence to show that the result has been so affected This is because the candidate whose nomination paper has been rejected was not in the field of Election at the time of voting, and any evidence led to show the candidate's chances for success in the Election would be nothing more than mere speculation Any number of witnesses called to speak to the number of votes that might or might not have gone to the candidate whose nomination was rejected, would be giving only speculative evidence, which would have no value It is impossible for any one to say how a particular elector might vote at the poll We cannot form any opinion on mere conjectures as to what the verdict of the electorate might have been if Shri Selot's nomination was not rejected, and the electorate had not been deprived of the right to vote for him

32 Our attention was drawn to a number of decisions of the Election Tribunals in which the same view has been taken We would only refer to the Election Petition No 208 of 1952 (Brij Narayan Singh *Versus* Shri Thakur Hukum Singh, decided by the Election Tribunal at Lucknow), in which the question has been thoroughly discussed considering all the previous and current decisions on the point We hold therefore, that the improper rejection of the nomination of Shri Selot has materially affected the result of the Election It follows, therefore, that the Election must be declared to be wholly void

33 Respondent No 13 was elected to the General seat, and Respondent No 18 to the Reserved seat The wording of Section 100 (1)(c) shows that the Election is to be declared wholly void The question therefore is whether the Election in so far as it relates to the Reserved seat will also be affected by the improper rejection of the nomination relating to the General Seat The anwser to this question depends on whetner the Election relating to the General Seat and to the Reserved seat was one indivisible Election or whether they were two separate Elections to these two seats held simultaneously for the purpose of convenience

34 Under Section 63 of the Representation of the Peoples Act, the voters in the constituency are under the rules allowed two votes each, with the option of

casting these votes for any of the candidates irrespective of the fact whether he does or does not belong to the Schedule cast, the only condition being that not more than one vote can be cast in favour of one candidate It is therefore, clear that any one of the voters who cast his vote for Respondent No 18 might have cast the same vote for Shri Selot, had his nomination [illegible] been rejected, and it is now, of course impossible to discover who may or may not have voted for Respondent No 18, if Shri Selot had been in the field Though Shri Krishna Selot was eligible for the Election to the General Seat it cannot be said to be beyond the bounds of possibility that the voters who have given one vote to Respondent No 18 might have given their votes to Shri Krishna Selot, which would have affected the vote polled by Respondent No 18 and he may not have been returned

35 As provided by Section 55 of the Act [illegible] member of the Schedule caste is not disqualified to hold a general seat [illegible] Respondent No 18 and other members, who had filed their nomination [illegible] for the reserved seat were also contesting the Election to the General seat for which Shri Selot had filed his nomination In a double-member constituency when two of the candidates of the Scheduled castes top the polls they carry away both the seats—the general and the Reserved All these facts go to show that the Election to the General seat and that to the Reserved seat are not two separate Elections but one indivisible Election in which candidates of the Schedule castes are also contesting for the Election to the General seat We are not therefore prepared to accept the argument advanced on behalf of the Respondent No 18 that the Election to the General Seat, and Election to the Reserved seat were two separate Elections, held simultaneously for the purpose of convenience It was one entire indivisible Election, and therefore the only meaning [illegible] be put upon the words 'the Election' used in Section 100 (1)(c) would be the Election to both the seats in the constituency

36 Similar view was taken on the question in the following cases—(1) Election petition No 104 of 1952 [illegible] before the Election Tribunal Patiala (2) Election [illegible] versus Hemchand before the Election Tribunal Delhi (3) Election Petition No 33 of 1952 C K Ramchandran Nair versus Ramchandradasan before the Election Tribunal Quilon (4) Election petition No 1 of 1952, Bijoy Mohan Reddi versus Pagga Pulla Reddi before the Election Tribunal [illegible] (5) Election Petition No 19 of 1952 Nagi Bhai versus Mithabhai before the Election Tribunal Baroda (Bombay) The reasoning adopted in every case was the same viz. that the Election to the two seats—one for the General and the other for the Reserved was one indivisible Election and, therefore the improper rejection of a nomination paper relating to either of these two seats affects the [illegible] We therefore [illegible] that the words 'the Election' used in Section 100 (1)(c) of the Act refer to the entire Election held in the Constituency [illegible] for [illegible] seat or for two seats one general and the other Reserved In this case [illegible] the whole Election relating to the General as well as the Reserved seat [illegible] been affected as a result of improper rejection of nomination paper of Shri [illegible] and consequently we declare the Election relating to both the seats [illegible] wholly void

37 The question of improper rejection of nomination paper filed by Respondent No 12 Ramgulam Chaube and improper acceptance of the nomination paper of [illegible] No 4 Dasrathlal [illegible] not pressed, and [illegible] whether the [illegible] was improperly accepted [illegible] that of Dasrathlal [illegible] accepted [illegible] are therefore in the negative

38 Respondent No 4—Dasrathlal— [illegible] raised additional objection [illegible] [illegible] paper was improper We [illegible] this question [illegible] by [illegible] of the Respondents [illegible] the scope of the enquiry is limited [illegible] to the [illegible] this question was not raised by the petitioner [illegible] allow it to be raised at the trial

(Sd) M M MULLNA Member,
Election Tribunal 19-2-53
(Sd) G A PHADKE, Member,
Election Tribunal, 19-2-53.

1. I have had the advantage of going through the order written by my learned brother (Shri G. A. Phadke) and I agree with all his conclusions, but I desire to add my reasons for holding that the office of patel in a quondam malguzari village is the same as the office of patel in raiyatwari village There is no doubt that there is nothing in the Abolition of Proprietary Rights Act to indicate that the office of lambardar had been abolished; there can, however, be little doubt that in the villages, the proprietary rights in which have been abolished, there cannot be appointed any lambardar now and all the duties of the quondam office of the lambardar are now assigned to the patel appointed under the Abolition of the Proprietary Rights Act. This almost amounts to merely changing the name of the office. What was 'lambardar' before the Abolition of the Proprietary Rights is now "patel" under the abolition of the Proprietary Rights Act. Thus taking into consideration the well-known canons of liberal interpretation, even if "patel" had not been mentioned in the Schedule attached to the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, it would have been difficult to hold that a person occupying a certain office, who enjoyed the right to be a member to fill a seat in the Legislative Assembly on account of a legislation removing the disqualification entailed by his occupying the office, was deprived of that right by mere change in the nomenclature of the office But in this case it is not necessary to resort to those rules of liberal interpretation as the office of patel is specified in the Schedule [Item No 8 of the Schedule attached to the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, 1950.]

2. It would appear from the list of offices of profit, the disqualification of the holders of which was sought to be removed, that the policy of the law was to remove the disqualification in the case of all village officers whose duty it was to recover land revenue and look after the management of the villages. It would be apparent that all village officers except Patwaris and Kotwars were to be benefited by the legislation. This would be apparent from the inclusion in the list of the lambardar, lambardar Gumashta. Mukaddam and Mukaddam Gumashta in a Malguzari village, a patel in a Raiyatwari village and a malik patel or a substitute patel in a village in Berar. If after the passing of this legislation [the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, 1950] and before the date of filing of nomination papers the name of any of the offices was changed, it would be difficult to hold that the right which the officer enjoyed before the change of the name of the office was lost merely because there was a change in the name.

3. It has been laid down in several cases, that one of the principles which must guide the Courts in interpreting the Statutes is that a court must attempt to find the intention of the Legislature and to give effect to that intention. In PROVINCIAL GOVERNMENT *Vs.* HAJI ALI (I.L.R.1946 Nagpur 931) it was pointed out that it was permissible to read a Statute in such a way as though some of the words appearing there were not there if such words rendered it impossible to carry out the intention of the Act Similarly it is permissible to insert certain words in a Statute where those words do not appear in order to carry out its intention. The facts of that case were, of course different from the facts of this case. I am only referring to the principles which have been deduced in that case from the rulings therein cited In this case, however as I have stated above, there is no difficulty as there is actually a provision in the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act 1950 under which I am bound to hold that the office of patel in a village, the proprietary rights in which were abolished under the Madhya Pradesh Abolition of the Proprietary Rights Act, is an office the disqualification attaching to which has been removed.

4. The abolition of the Proprietary Rights Act came into force nearly a year after the publication of the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, 1950 It was, therefore, argued that the office of patel, which came into existence on the abolition of proprietary rights in villages the proprietors of which were deprived of their proprietary rights, and which did not exist in such villages before could not be deemed to have been included in the list of offices of profit included in the Schedule attached to the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act 1950 This might appear so, but one of the offices, the disqualification attaching to which had been removed, was described as "patel as defined in the Central Provinces Land Revenue Act, 1917", and there was nothing to prevent the Legislature from giving the same name to a newly created office so that the rights enjoyed by the holders of the old office of the same name should be enjoyed by the holders of the new office No definition of the word 'patel' is given in the Madhya Pradesh Abolition of Proprietary Rights Act, but in Section 2(b) of the Act, it is laid down that any expression not defined in the Act, but used or explained in the Central Provinces Land Revenue Act,

1917, ...would have the meaning therein assigned to it. The meaning of the word 'patel' under the Madhya Pradesh Abolition of Proprietary Rights Act would be the same as the meaning assigned to the word 'patel' in the Central Provinces Land Revenue Act, 1917. It would thus appear that a patel appointed under the Madhya Pradesh Abolition of the Proprietary Rights Act, would mean a patel as defined in the Central Provinces Land Revenue Act, 1917. A patel appointed under the Madhya Pradesh Abolition of the Proprietary Rights Act, would, therefore, have all the rights of a patel as defined in the Central Provinces Land Revenue Act, 1917. The entry No. 8 in the Schedule would, therefore, apply to a patel appointed under the Madhya Pradesh Abolition of the Proprietary Rights Act, 1950, and a patel appointed in the quondam malguzari village would, therefore, enjoy the same rights and be entitled to the same privileges, including the removal of disqualification, as a patel in Raiyatwari village is entitled to.

5. Under the Abolition of Proprietary Rights Act, the rights of the proprietor have passed from such proprietor and have vested in the State for purposes of the State. (See Section 3 of the Act). If there was no provision made in the Act as regards what was to happen on such vesting, the village would have been converted into a Raiyatwari village (See Section 213 of the Central Provinces Land Revenue Act, 1917) and a declaration by the Commissioner would have been necessary to change the status of malik makbuza and absolute occupancy tenants and other tenants. It would appear from the provision of Section 213 of the Land Revenue Act that on the vesting of the proprietary rights in any Mahal in the State, the Mahal becomes a Raiyatwari village. Here the position is not different, though the Madhya Pradesh Abolition of the Proprietary Rights Act does not in terms state that on the vesting of the proprietary rights in a Mahal in the State, that Mahal becomes a Raiyatwari village. The person who performs the duty of collection of land revenue in a Raiyatwari village is called a patel, and it was, therefore, consistent with the scheme of the Central Provinces Land Revenue Act, that on the vesting of the proprietary rights in the State under Act No. I of 1951, the person appointed to collect the land revenue should be designated in the same way. He was, therefore, called a patel, and the old name of lambardar was not continued. As the position of the patel under the Madhya Pradesh Abolition of the Proprietary Rights Act (I of 1951), is the same as a patel in the Raiyatwari village, it would be absurd to hold that the entry No. 8 in the Schedule does not cover a patel in a quondam malguzari village. In my opinion, therefore, a patel appointed under the Madhya Pradesh Abolition of the Proprietary Rights Act, falls within the entry No. 8 of the Schedule and the disqualification attaching to his office must, therefore, be held to have been removed. Merely because the Madhya Pradesh Abolition of the Proprietary Rights Act was passed subsequent to the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, 1950, it cannot be held that the benefit of the removal of disqualification cannot be given to a subsequently created office under the Madhya Pradesh Abolition of the Proprietary Rights Act, when such subsequently created office is given the same name as the one specified in the list of offices of which disqualification had been removed.

6. I, therefore, agree with the conclusions of my learned brother that the office of patel in a quondam malguzari village is included in the list of offices given in the Schedule attached to the Madhya Pradesh Offices of Profit (Removal of Disqualifications) Act, 1950, and the rejection of the nomination paper of Shri Selot was, therefore, improper.

(Sd.) N. H. MUJUMDAR, *Chairman*,
Election Tribunal, 19-2-53.

JABALPUR;
The 19th February, 1953.

I agree with the opinion of the learned Chairman on the point of interpretation of Statutes and this ground is an additional ground supporting the conclusions reached by us all.

(Sd.) M. M. MULLNA, *Member*,
Election Tribunal, 19-2-53.

JABALPUR;
The 19th February, 1953.

Order Made by the Election Tribunal

The election petition succeeds and is allowed. We declare the Election from the Khurai Constituency to the Madhya Pradesh Legislative Assembly to be wholly

void. As this was the result of improper rejection of a nomination paper by the Returning Officer, it would not be proper to ask any of the respondents to pay the costs of the Petitioner. The proper order in such a case would be to direct the parties to bear their own costs and we, therefore, order accordingly. There is no doubt that the respondent No. 18 who has been declared elected to the Reserve Seat has to suffer without any fault of his and though there is really no allegation in the petition against him, but that is the result of law and we cannot in any way help it.

(Sd.) N. H. MUJUMDAR, *Chairman*,
Election Tribunal, 19-2-53.

(Sd.) M. M. MULLNA, *Member*,
Election Tribunal, 19-2-53.

(Sd.) G. A. PHADKE, *Member*,
Election Tribunal, 19-2-53.

SCHEDULE OF COSTS

Case No. 4 of 1952.

Jagannath .....Vs.....Achwal Pandurang.

	For Petitioner	Respdt. No. 4	Respdt. No. 13	Respdt. No. 15	Respdt. No. 17	Respdt. No. 18	Respdt. No. 21
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1 Publication charged	90 8 0	..	..	..	..	..	..
2 Stamp for Power	4 0 0	1 0 0	2 0 0	1 0 0	1 0 0	1 0 0	1 0 0
3 Stamp for application and affidavits	1 0 0	1 0 0	5 0 0	..	1 0 0	..	..
4 Pleader's fees	550 0 0	..	..	..	..	400 0 0	..
5 Service of processes	19 8 0	..	9 0 0	..	..	..	..
6 Subsistence for witnesses	13 0 0	..	224 8 0	..	..	..	..
7 Stamp for documents	17 14 0	1 0 0	16 14 0	..	6 0 0	..	..
TOTAL	695 14 0	3 0 0	257 6 0	1 0 0	8 0 0	401 0 0	1 0 0

(Sd.) N. H. MUJUMDAR, *Chairman.*
(Sd.) M. M. MULLAN, *Member.*
(Sd.) G. A. PHADKE, *Member.*

[No. 19/37/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.

S.R.O. 390.—WHEREAS the election of Shri M. V. Gangadhara Siva of Rayachoti, Cuddapa District, and Shri T. N. Vishwanatha Reddy of Madanapalle, Chittoor District, as members of the House of the People from the Chittoor constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mohan Vithal Raj of 47 Lakshmi Building, Sir Pherozeshah Mehta Road, Fort, Bombay;

AND WHEREAS, the Election Tribunal appointed by the Election Commission in pursuance of the provision of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, VELLORE

PRESENT.

Sri M. Anantanarayanan, I.C.S.,—*Chairman.*

Sri P. Ramakrishnan, I.C.S.,—*Member* and

Sri B. V. Visvanatha Aiyar, M.A., B.L.,—*Member.*

Saturday, the seventh day of February, one thousand nine hundred and fifty-three

ELECTION PETITION No. 170 OF 1952

1. Mohan Vithal Raj—*Petitioner.*

Versus.

(1) M. V. Gangadhara Siva;
(2) K Nanjappa;
(3) T. N. Visvanadha Reddiar;
(4) D. Khader Khan;
(5) C. L. Narasimha Reddy;
(6) R. Narasimha Reddiar;
(7) T. Shanker Reddiar;
(8) B. Sidhayya;
(9) D. Periyya; } (added as per order on I.A. No. 310 of 1952, dated 28-11-1952,) and
(10) R. Ramachandra Reddiar—added as per order on I.A. No. 353/1952, dated 16-1-1953,—*Respondents.*

This is an Election Petition under Section 100(c) of the Representation of the People Act, 1951, against one M. V. Gangadhara Siva and 9 others (respondents herein) praying to declare that the Election of the respondents 1 and 3 to the House of the People from the Chittoor Constituency, held on 25th January, 1952 is void, invalid and inoperative in law and that in the alternative on the nomination of respondent No. 1 being held invald, void and inoperative, the petitioner be himself declared elected to the reserved seat and to recover costs of this Petition.

This Election Petition coming on for hearing before the Tribunal on the 31st day of January, 1953, in the presence of Messrs. S. Babu Reddiar and S. Sundararaja Aiyar, Advocates for the Petitioner, of Messrs. P. Srinivasachariar, and P. S. Rajagopal Naidu, Advocates for the respondents 1 and 3, of Sri M. Ananthasayanam Iyengar, Advocate for the 3rd respondent, and the respondents 2, and 4 to 10 being absent *ex-parte*, and having stood over till this day for consideration, the Election Tribunal delivered the following.

JUDGMENT

The petitioner, Mohan Vithal Raj, seeks to set aside the election of the respondents 1 and 3 to the House of the People from the Chittoor Constituency which is a plural Member Constituency. He contested the election for the Reserved seat for the Scheduled Castes. The petitioner secured 40,342 votes as against the first respondent another Scheduled caste candidate who secured 1,51,082 votes. The petitioner alleges that the nomination of the 1st respondent was invalid for the reason that it did not declare the name of the Election Agent

as required by Section 33(3) of the Representation of the People Act, 1951. He also contends that the order of the Returning Officer accepting the nomination paper of the 1st respondent was bad and inoperative in law, in so far as he accepted the description of the election agent as 'myself' was not sufficient compliance with the express provisions of the law. He further avers that the Returning Officer in giving his decision was actuated by extraneous considerations such as the presence of highly placed Congress leaders and Officials, appearing before him. The petitioner further alleges that the election was not a free election for the reason that it had been procured or induced by corrupt or illegal practices namely, the exhortation by the Polling Officers and other Government servants to the voters to drop the votes in the boxes bearing the symbol of the Congress candidate. The petitioner also states that he was prejudiced in the election by reason of the fact that his name was wrongly listed as 'Rajamohan Vithal' and not as 'Mohan V. Raj', by which name he was made known in all the printed literature published. There is a further allegation that the voters were falsely induced by the respondents to give both their votes to one candidate. The petitioner consequently prays that the election should be declared void and that in the alternative on the nomination of the first respondent being held invalid, that he himself should be declared elected to the Reserved seat.

2. Sri Gangadhar Siva, the first respondent, the successful Congress candidate, states in his counter that the petitioner who secured the least number of votes and has forfeited his deposit has come forward with this frivolous petition solely with a *mala fide* object. He further states that there was absolutely no defect either in the filling up of the nomination papers or in appointing himself as his election agent. He denies the suggestion that highly placed Congress leaders and officials influenced the Returning Officer or that there was any corrupt or illegal practice as alleged in the petition. He states that there was no wrong listing in respect of the names or in arranging the boxes, that the petitioner's name was not wrongly described anywhere and that his election is not liable to be set aside on any ground. The 3rd respondent substantially adopts the statement of the 1st respondent. The other respondents are *ex parte* at the hearing.

3. The following issues were raised:

(i) Is the Election of the respondents 1 and 3 liable to be set aside for the reason that they had not declared the names of their Election Agents in their nomination paper?

(ii) Is the order of the Returning Officer accepting the nomination of respondents 1 and 3 invalid for the reasons stated in paragraph 4 of the petition?

(iii) Is the Election of respondents 1 and 3 liable to be set aside for the reason that there was not a free election and had been procured by corrupt practices as stated in paragraph 8 of the petition?

(iv) Is the petition liable to be dismissed for the reason that all the duly nominated candidates have not been impleaded therein?

4. *Issues* 1 *and* 2.—The first objection raised by the petitioner relates to the appointment of the Election Agent by the first respondent. Section 40 of the Representation of People Act, 1951, provides that every person nominated as a candidate for the election shall, before the delivery of his nomination paper, appoint in writing either himself or some one other person to be his election agent. The term 'agent' is defined in Section 79(a) of the Act and Section 33(3) of the Act provides as follows: "Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified, under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed, and no candidate shall be deemed to be duly nominated unless such declaration is, or all such declarations are, delivered along with the nomination paper. Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 contains the form of the nomination paper and it provides for the appointment of the election agent by the candidate. Exhibits A-1 to A-3 are the nomination papers filed by the respondent. In all the forms in the portion relating to the appointment of the election agent, the candidate states "I hereby declare that I have appointed 'myself' as my election agent". It is contended for the petitioner that even in a case where the candidate appoints himself as his election agent it is incumbent on him to give his name and father's name in that place, and that the omission to give those particulars constitutes a fatal defect rendering the nomination paper invalid. Reliance is placed upon the foot-note to the Form of the Nomination Paper in Schedule II which states as follows: "Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for

election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper". In the form in which the direction is given, it would appear that the name of the candidate appointing himself as his agent should be set out where he files more than one nomination paper. Council for the first respondent points out an anomaly in this connection namely, that on the language of the provision set out above it will not be necessary to give the name of the candidate where he files only one nomination paper appointing himself as his election agent. While we agree that the language of the Note extracted above is not happily worded and might be suitably amended to attain a greater degree of perspicuity, we are of the opinion that the direction contained therein is by no means mandatory, and that in any event the omission to insert the name of the candidate appointing himself as his election agent is not a material defect. It is significant that the form itself contemplates the naming of the agent and of his father only in cases where a person other than the candidate is appointed as the agent. The Blank space provided for in the form before and after "son of" are not repeated in the lower portion where the only word that appears is 'myself'. The reason of the rule regarding such particulars is that the agent should be capable of easy identification, because the agent has certain responsibilities in the matter of an election. We fail to see how the omission to give the name of the candidate when he appoints himself as the election agent, can at all mislead anybody, especially when below the word 'myself' the candidate himself has signed and full particulars as to his name, his father's name etc., are available in the upper portion of the form. The argument advanced on behalf of the petitioner has nothing more than a technical value and is unacceptable especially as Section 36(4) of the Representation of the People Act, 1951, provides that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. The decision of the Election Tribunal, Quilon in Election Petition No. 33 of 1952, published in the *Gazette of India Extraordinary* dated 11th November, 1952 has been brought to our notice. In that case, as here, the candidate appointed himself as his election agent and did not specify his name in the portion of the form relating to agents but signed it properly. It was held that there was substantial compliance with Section 40 and that the directions regarding the filling up of forms were merely directory. The Tribunal observed "if it is clear from the declaration form who is the person appointed as election agent and there is no possibility of mistake, or ambiguity in this, the compliance with provision of the Act and Rules relied upon by the respondent is sufficient". We adopt this view and are consequently of the opinion that the order of the Returning Officer rejecting this contention is correct and that there is no reason to declare the nomination paper filed on behalf of the first respondent as invalid as contended for by the petitioner. Issues 1 and 2 are answered against the petitioner.

5. *Issue* 3.—The next contention urged on behalf of the/petitioner is that his name was wrongly listed as 'Rajamohan Vithal' and not as 'Mohan Vithal Raj'. The petitioner states in his evidence that he saw in the 'Hindu' of 5th December 1951, that his name had been wrongly announced as Raj Mohan Vithal and that on 22nd December, 1951 he addressed a letter Exhibit A-4 to Returning Officer stating that his correct name was Mohan V. Raj, that the 'Indian Express' had correctly published his name and that his name should be properly published in the newspapers The Returning Officer, however, informed him that there was no justification to issue an erratum as the publication in the 'Hindu' corresponded with his name as it appeared in the Electoral roll, in the nomination form and in the list of valid nominations. The petitioner states that he was generally known as Mohan V. Raj and that on the date of the election the voters told him that they could not find his name. He also states that he issued pamphlets Exhibits A-8 series in that name.

6. The original nomination paper filed by the petitioner is unfortunately not available to us although steps were taken for its production. We have been informed by the Collector that the nomination paper cannot be traced and we have therefore to look at the other evidence relating to the contents of the nomination paper of the petitioner. It is however fairly clear on the evidence before us that the name of the petitioner was inserted in the nomination form as 'Raj, Mohan Vithal'. The petitioner has given candid evidence on this point and states in his cross-examination as follows: "I filled up my name exactly as in the Electoral Roll, Exhibit A-5 Raj, Mohan Vithal' in Column (2) of the nomination paper. . I signed my name as usual as Mohan V Raj. I wanted my name to be notified as Mohan V. Raj. I did not give any indication to the Returning Officer about that before the approval of the names, as I had no opportunity to do it." He also states that in the Telephone Directory in Bombay his name was given as Raj Mohan Vithal. No doubt in the pamphlets, Exhibits A-8 series he has described himself as 'Mohan Vithal Raj' while in the posters at the Polling booths,

Exhibit A-13 series his name is given as Rajmohan Vithal. It is significant that the Returning Officer in his reply Exhibit A-4(a) states as follows: "Your name as it appears in the Electoral Roll and in the nomination form has been adopted in the list of valid nominations".

7. From the foregoing, it will be fairly clear that in the Electoral Roll at Bombay, in the nomination form filed by the petitioner and in the list of valid nominations, Exhibit A-7, the name of the petitioner is given as Raj Mohan Vithal. In Exhibit A-5 which is a certificate by the Electoral Registration Officer, Bombay, the petitioner's name is given as 'Raj, Mohan Vithal'. A suggestion has been made on behalf of the first respondent that the comma after 'Raj' was surreptitiously introduced We are of the opinion that this is a worthless suggestion, one which ought not to have been made, especially as we find in Exhibit B-6, a certified extract of the form for Enrolment of Graduates' Constituency, that in giving the name of the petitioner the comma appears in type after the word 'Raj'. There is little doubt that the name of the petitioner as it appeared in the Electoral Roll at Bombay was Raj, Mohan Vithal. It is also seen that the same name was adopted both in the nomination form filed by the petitioner and in the list of valid nominations published. Under these circumstances it is difficult to see how exactly the petitioner can contend before us that there was any mis-description of his name, much less that it resulted in confusion among the voters as to identity or that it vitiated the election. It may be that he signs his name in a manner different from that which is adopted in the Electoral Roll. It cannot be said that he had no opportunity of correcting the entry in the Electoral Roll, and once the name is described in the Electoral Roll in a particular manner, and he has adopted that as his name in the nomination paper he cannot turn round and say that he should really have been described in a different manner. Where it appears that the nomination paper and the list of valid nominations correspond to the name given in the Electoral register, it cannot be contended that really the name of the candidate was different. In fact, if a different name had been adopted either in the nomination paper or in the list of valid nominations it could have been open to the objection that it did not correspond with the entry in the Electoral Register, and that the nomination was therefore invalid.

8. Counsel for the petitioner relies upon the following passage in Halsbury's Laws of England (Hailsham Edition, Volume 12, page 251). "The candidate must be described in the nomination paper in such manner as in the opinion of the returning officer is calculated sufficiently to identify him. The description must include his name, his place of abode, and his rank or profession or calling. His surname must come first in the list of his names, and must be followed by his full christian name or names". He also relied upon the decision in Mather *v.* Brown [(1876) I.C.P.D. 596] which related to the election of a Municipal Councillor to a Ward, under the English Municipal Corporation Act, 1882. In that case, it was found that the candidate was described as 'Mather, Robert V." instead of 'Mather, Robert Vicars,". It was held that the misdescription was fatal to the nomination paper. It is well to remember that in the above case there was a total omission of the proper name except for the initial 'V' and it could be argued with reason that without the name 'Vicars' the voters could not have possibly indentified the candidate himself. In the present case, however, there was very little room for confusion, or for voters being misled. For one thing, the petitioner himself states that 'Raj Mohan Vithal' had been adopted as his name in the Telephone Directory at Bombay and in the Electoral Rolls. But the more important thing is that there is really no evidence in this case that any voter was misled by such misdescription. On the other hand, the fact that symbols were adopted in the course of the elections, and the large mass of the electorate purported to cast their votes with reference to the symbols, removes the possibility that they had been misled by any supposed error as to the description of the name. We are therefore of the opinion that there was no misdescription in the name of the petitioner inasmuch as the name in the nomination form was exactly the same as it was in the electoral roll, and that there was no defect in the publication of the petitioner's name. We consequently hold that there is no substance in this objection, and that the election is not liable to be set aside for the reason that there was a misdescription of the petitioner's name in the nomination paper.

9. The next charge levelled by the petitioner is that the boxes of the Congress candidates were deliberately kept side by side in the several Polling stations, with a view to induce the voters to cast both the votes in favour of the Congress party candidates. The petitioner states in his evidence as follows:—"I was at a disadvantage in not having my boxes before the first respondent and the 3rd respondent. If my box had been before the 3rd respondent, it would have split the Congress votes. I canvassed my votes saying that my box would be after the first respondent's". With reference to the arrangement of the boxes it has to be observed that it follows

the order given in the list of valid nominations And the mode in which the list of valid nominations is to be prepared is described in Section 10(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. It provides that the list shall contain the names in alphabetical order, which order shall be determined with reference to the surnames of the candidates having surnames and the names proper of other candidates. The petitioner has frankly stated that 'Raj' is his surname. In view of this, there is very little force in the objection that the list of valid nominations was not prepared properly or that the boxes were not arranged properly, much less that the first respondent secured an advantage by reason of such an arrangement We consequently hold that the election is not vitiated on this ground.

10. The two other charges made by the petitioner are even more unsubstantial. With reference to the allegation that the petitioner's boxes in Palmaner Taluk, Sokada Bakka Polling Station, the petitioner states as follows—"When I saw the box at the counting there was a slit in it, but some gum was sticking in the opening preventing the free ingress of the ballot papers The box of Narasimha Reddi had its slit also blocked by gum". Exhibit A-10 is a copy of protest made by the petitioner in this contest. He also relies on the fact that this particular box did not contain a single vote in his favour This charge is of a very grave nature and would if substantiated have serious effect on the election But there is very little evidence in proof thereof. The petitioner admits that beyond giving a written complaint he did nothing. He also states that he had no agent in that Polling station and that one Ranganatha Mudaliar, a retired Municipal employee at Chittoor, was with him at the time he discovered that the gum had been pasted in the box. But he has not summoned Ranganatha Mudaliar or adduced any other evidence in proof of this allegation. Rule 75 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 prescribes the procedure for locking up and sealing the boxes before the commencement of the poll. Ample opportunity is furnished to the candidate as well as the agent to examine the boxes and point out any defects therein There is nothing on record to show that this procedure was not adopted in this case or that any pasting was done on the particular box (Exhibit A-14) after the commencement of the poll We are therefore of the view that there is no substance in this charge

11 The other allegation made by the petitioner is equally groundless He states that at Bangaru Zamindar's School, the Clerk who issued the ballot papers, told the lady voters to cast the votes for the bulls and that he made a complaint (Exhibit A-9) to the Presiding Officer immediately. We find however on a perusal of Exhibits B-4 and B-5 the statements of the Presiding Officer and the Congress agents, that there was no such canvassing The petitioner states that Shanker Reddi, another candidate for the election was aware of such canvassing inside the Polling Booth but he has not chosen to examine him Nor has he examined any other witness to prove this allegation We are of the opinion that there is no substance in this charge and that there has been no corrupt or illegal practice in the conduct of the election nor have we any reason to hold that it was not a free election as stated in paragraph 8 of the petition.

12. *Issue* 4—All the duly nominated candidates have been subsequently included and the defect in the form of the petition has been cured by such joinder. This issue is consequently found against the petitioner

13. Before taking leave of the case, we would like to point out that the original nomination paper of the petitioner has not been produced, a fact that we had to note with considerable surprise Steps were taken and time granted for the production, but we are told that the document has been probably lost or mislaid, and is unavailable. In view of the fact that this election petition has been pending for some time, and that the contents of this nomination paper formed an important part of the subject matter of the enquiry, we would have expected far greater care to have been taken in the matter of custody of such documents. Fortunately, we have been able to reconstruct the contents from available material, as set forth already in giving our conclusion We would like to say that it is of the utmost importance that such documents should be preserved in the custody of senior officers, particularly when an election petition has been filed and is pending, and that the present explanation for the non-production is not even particulary convincing. We need not stress that it is essential to preserve and maintain public confidence in the matter of safe custody of such valuable documents

14. In view of the conclusions arrived at on the above issues we hold (i) that the result of the election has not been materially affected by the improper acceptance of the nomination paper of the first respondent within the meaning of Section

100(1)(c) of the Representation of People Act, 1951: (ii) that there was no corrupt or illegal practice within the meaning of Section 99 of the Act; and (iii) that the election is not liable to be set aside on the ground that it was not a free election within the meaning of Section 100(1)(a). This petition is consequently dismissed with costs. We fix the Advocate's fee at Rs. 250.

Dictated to the Shorthand Writer and pronounced in open Court, this, the 7th day of February, 1953.

(Sd.) M. ANANTANARAYANAN, *Chairman.*

(Sd.) P. RAMAKRISHNAN, *Judl. Member.*

AND

(Sd.) B. V. VISWANATHA AIYAR, ADVOCATE, *Member.*

Petitioner's witness:

1. Mohan Vithal Raj—*Petitioner.*

Respondents' witnesses:

Nil.

Petitioner's Exhibits:

A-1. 19-11-1951. Nomination paper filed by Sri M. V. Gangadhara Siva for Election to the House of the People from the Chittoor Parliamentary Constituency.

A-2. 19-11-1951. Nomination paper filed by Sri M. V. Gangadhara Siva for Election to the House of the People from the Chittoor Parliamentary Constituency.

A-3. 19-11-1951. Nomination paper filed by Sri M. V. Gangadhara Siva for Election to the House of the People from the Chittoor Parliamentary Constituency.

A-4. 22-12-1951. Letter written by Mohan V. Raj to the Returning Officer, Chittoor Parliamentary Constituency.

A-4(a). 27-12-1951. Reply sent by the Assistant Returning Officer to the petitioner

A-5. 13-11-1951. Certified copy of the entry of the name and other particulars of Raj Mohan Vithal in the Electoral Roll.

A-6. 27-12-1951. Reply sent by the Returning Officer, Chittoor, Parliamentary Constituency to the petitioner.

A-7. 1-12-1951. List of valid nominations for Election to the House of the People prepared by the Returning Officer, Chittoor.

A-7(a). 21-11-1951. Form No. 2 Notice of Nomination for Election to the Chittoor Parliamentary Constituency.

A-8. A pamphlet issued by the petitioner.

A-8(a). A pamphlet issued by the petitioner.

A-9. 25-1-1952. Complaint made by the petitioner to the Presiding Officer.

A-10. A copy of protest filed by the petitioner, before the Assistant Returning Officer, Chittoor.

A-11. 25-1-1952. A copy of protest filed by the petitioner before the Presiding Officer, Polling Station No. 452, Chittoor.

A-12. 15-11-1951. A declaration by the petitioner before the District Magistrate, Secunderabad.

A-13. A poster for Sri C. L. Narasimha Reddi and Sri Raj Mohan Vithal, Election candidates.

A-13(a). A poster for R. Narasimha Reddi and Sri T. Sankara Reddi, Election candidates.

A-13(b). A poster for Sri D. Khadarkhan and Sri N. V. Cangadhara Siva, Election candidates.

A-13(c). A poster of Sri T. N. Viswanatha Reddi and Sri K. Nanjappa, Election candidates.

A-14. An empty ballot box of the petitioner bearing the symbol an elephant.

Respondents' Exhibits:

B-1. 1-7-1952. Signature of the petitioner in the list of corrupt practices appended to the Election Petition.

B-2. 1-7-1952. A copy of the electoral roll of Chittoor Parliamentary Constituency.

B-3. 1-7-1952. Form of account of Ballot Papers in the Chittoor Parliamentary Constituency for the candidate, Raj Mohan Vithal.

B-4 25-1-1952. Letter written by the Presiding Officer, Polling Station No. 452, Chittoor, to the Returning Officer, Chittoor.

B-5. 25-1-1952. Statements made by Srimati S. Kamalam, Assistant Polling Officer and Sri K. Ponniah, Clerk.

B-6. 25-7-1951. True copy of the application by the Petitioner for enrolment for Graduates' Constituency of the Legislative Council, Bombay.

(Sd.) M. ANANTANARAYANAN.

DETAILS OF COSTS.

Costs to be paid by the petitioner to the respondents 1 and 2—

Stamp on wakalath.	1	0	0
Stamp on petition	0	12	0
Process fees, etc.	3	2	0
Pleader's fee (allowed)	250	0	0
TOTAL	254	14	0

(Sd.) M. ANANTANARAYANAN, *Chairman.*

P. S. SUBRAMANIAN,
Officer on Special Duty.

PRINTED IN INDIA BY THE MANAGER GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1953